

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In Regards To:) Docket No. PS08-____
A Request by NorthWestern Corporation,)
d/b/a NorthWestern Energy, for a waiver)
from 49 C.F.R. § 192.285(a)(2) and) **REQUEST FOR WAIVER**
49 C.F.R. § 192.285(c))

NOW COMES, NorthWestern Corporation, d/b/a NorthWestern Energy, hereinafter referred to as NorthWestern, by and through its attorney of record, Brett Koenecke of May, Adam, Gerdes & Thompson, who respectfully requests a permanent waiver from 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c). In support of its request, NorthWestern states as follows:

1. NorthWestern is a public utility providing electric and natural gas utility services to 137 (110 electric and 59 natural gas) South Dakota communities in east-central South Dakota.

2. 49 C.F.R § 192 consists of federal safety standards for the transportation of natural gas by pipeline.

3. 49 C.F.R. § 192.285(a) requires persons making plastic joints be qualified under applicable joining procedures. 49 C.F.R. § 192.285(c) further requires that:

“a person must be requalified under an applicable procedure, if during any 12-month period that person: (1) Does not make any joints under that procedure; or (2) has 3 joints or 3 percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under 192.513.”

4. NorthWestern requests a waiver of 49 C.F.R. § 192.285(c), to allow it to requalify its employees by an alternate means of assuring qualifications for persons making joints. NorthWestern proposes the following procedure:

- “A person must be requalified under an applicable procedure at least once per calendar year, but at intervals not exceeding 15 months.
- In addition, if a joiner has 1 joint under the procedure that is found to be unacceptable by testing under 49 C.F.R. 192.513, that person must requalify under that procedure as an initial qualification.”

5. NorthWestern requests a permanent waiver since the requirements for testing will be required for the foreseeable future.

6. Application of this rule poses an undue hardship on NorthWestern. NorthWestern will not be able to perform the tests at the most advantageous time from a cost and quality perspective. The current 12-month retest requirement will result in testing about every 11 months which will eventually result in testing being performed in the middle of the construction season or at the end of the construction season.

7. Approval of the waiver will not prejudice the legal rights of any person since employees making plastic joints will continue to be tested prior to the start of each construction period. Approval of the waiver would still require ten qualifications of a person over ten years with the test occurring every 12 months.

8. 49 C.F.R. § 192 contains provisions for requesting a waiver of pipeline safety provisions. Therefore, the rule subject to the petition for waiver is not specifically mandated by statute or another provision of law.

9. Approval of this request for waiver will result in superior safety compared to what can be achieved under the current requirements of 49 C.F.R. § 19.285(c).

10. NorthWestern believes that requalification of plastic joining personnel just prior to the construction season provides the highest quality workmanship. It is at the end of the time period that fewest plastic joints are made and the beginning of the time when the most joints will be made.

11. Because of scheduling considerations, travel, illness, group size and vacations, qualification is a longer process and can take up to a month. The existing 12-month provision requires NorthWestern to establish evaluation schedules on an 11-month basis to account for these scheduling conflicts. Completing requalifications on an 11-month schedule ratchets back the requalification date, putting the requalifications into the end of the construction season and eventually during the construction season.

12. NorthWestern submits that annual testing provides the most accurate and consistent means of promoting joint quality. To comply with the current 12-month requirement and be able to continue testing just prior to the construction season, NorthWestern could no longer use a small group of testers but would have to use several qualification teams and conduct several make-up sessions to accommodate for vacation and illnesses. This would result in less consistency in evaluation and more administrative costs.

13. The U.S. Department of Transportation has already recognized the negative implication of following a “not to exceed 12 month” requirement. Other similar joining qualification requirements have established schedules that allow the operator more flexibility in establishing schedules that don’t ratchet schedules into the construction season. As an example, 192.229(d)(1) sets the qualification of welders to “within the preceding 15 calendar months, but at least once each calendar year.”

14. By testing plastic joints using the same group of testers in the same time frame, there is less chance that a records error would result in a joint being made by a non-qualified

person. In this proposal, there is general knowledge of when qualification is required as well as knowledge obtained by a records review. This redundancy knowledge will result in less opportunity for error.

15. The granting of this request for waiver would be consistent with other waivers of the 49 C.F.R. § 192.285(c) scheduling requirements that have been granted by other state regulatory commissions in other jurisdictions after appropriate state and federal reviews of safety impacts. Of specific note is that the South Dakota Public Utilities Commission previously granted a request for waiver from 49 C.F.R. § 192.285 (c) to MidAmerican Energy in its order issued January 7, 2008 for Docket No. PS07-003.

16. Approval of this request for waiver will enable NorthWestern to implement the same testing schedule in all of its operating areas, thereby promoting administrative efficiency and a proper allocation of resources.

17. NorthWestern is not aware of any persons who may be adversely impacted by the granting of this request for waiver.

NorthWestern welcomes the opportunity to respond to any questions concerning this request.

Wherefore, NorthWestern Energy respectfully requests the South Dakota Public Utilities Commission grant a permanent waiver of 49 C.F.R. § 192.285(a)(2) and 49 C.F.R. § 192.285(c).

Dated this 21 day of April, 2008.

Respectfully submitted,

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